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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

29
30 UNITED STATES OF AMERICA,
31 Plaintiff,
32 v.
33 ANTHONY LEON JOHNSON,
34 Defendant.

35 Case No. 1:03-CR-5053 AWI 1

36 **STIPULATED MOTION AND [lodged] ORDER**
37 **TO REDUCE SENTENCE PURSUANT TO**
38 **SECTION 404 OF THE FIRST STEP ACT, P.L.**
39 **115-391**

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41 Judge: Honorable ANTHONY W. ISHII

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1 2. Defendant was initially sentenced to a term of 262 months. (Dkt. 34.) The Ninth
2 Circuit Court of Appeals remanded the case, however, for resentencing pursuant to *United States*
3 *v. Ameline*, 409 F.2d 1073 (9th Cir. 2005) (en banc). (Dkt. 46.)

4 3. In 2006, defendant was sentenced to a term of 240 months.

5 4. On December 21, 2018, the First Step Act was enacted. First Step Act of 2018, S.
6 756, Pub. Law 115-391. Section 404 of the Act states that the sentencing court may, upon
7 motion of the defendant, an attorney for the government, or the court, “impose a reduced
8 sentence as if section 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the
9 covered offense was committed.”

10 5. The parties agree that defendant is eligible for a reduction of his sentence under
11 Section 404. Specifically, had sections 2 and 3 of the Fair Sentencing Act of 2010 been in effect
12 at the time the offense was committed, defendant would have been subject to a “term of
13 imprisonment which may not be less than 5 years and not more than 40 years.” 21 U.S.C.
14 § 841(b)(1)(B) (2010). Because the statutory penalty for the offense of conviction involving “28
15 grams or more of a mixture or substance . . . which contains cocaine base” is 40 years, the base
16 offense level under USSG § 4B1.1 is 34, resulting (after a three-level reduction for acceptance of
17 responsibility, USSG § 3E1.1) in a guideline range of 188 to 235 months. USSG Ch. 5, Pt. A. A
18 reduction comparable to the one received at resentencing would result in a sentence of 173
19 months.

20 6. Accordingly, the parties request this Court issue the order lodged herewith
21 reducing Mr. Johnson’s sentence to 173 months on all counts to run concurrently, all other terms
22 of the judgment remaining unchanged.

23 7. The undersigned counsel for defendant affirms that he has discussed this
24 stipulation with defendant and that defendant has authorized counsel to enter into this agreement
25 on his behalf. The undersigned counsel also affirms that, so long as the Court accepts this
26 stipulation, defendant waives his right to be present when the Court reduces his sentence, to any
27 hearing, and to any findings to which he might be entitled. The defendant has so indicated, and
28

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1 counsel joins in that waiver.

2 Respectfully submitted,

3 Dated: February 13, 2019

4 McGREGOR SCOTT
5 United States Attorney

6 /s/ Jason Hitt
7 JASON HITT
8 Assistant U.S. Attorney

9 Attorney for Plaintiff
10 UNITED STATES OF AMERICA

11 Dated: February 13, 2019

12 HEATHER E. WILLIAMS
13 Federal Defender

14 /s/ David M. Porter
15 DAVID M. PORTER
16 Assistant Federal Defender

17 Attorney for Defendant
18 ANTHONY LEON JOHNSON

ORDER

This matter came before the Court on the stipulated motion of the defendant for reduction of sentence pursuant to the First Step Act, P.L. 115-391.

The parties agree, and the Court finds, that Mr. Johnson is entitled to the benefit of Section 404 of the First Step Act, resulting in an amended guideline range of 188 to 235 months. A reduction comparable to the one received at the initial sentencing produces a sentence of 173 months.

IT IS HEREBY ORDERED that the term of imprisonment imposed in December 2006 is reduced to a term of 173 months on all counts to be served concurrently.

IT IS FURTHER ORDERED that all other terms and provisions of the original judgment remain in effect. The clerk shall forthwith prepare an amended judgment reflecting the above reduction in sentence, and shall serve certified copies of the amended judgment on the United States Bureau of Prisons and the United States Probation Office.

Unless otherwise ordered, Mr. Johnson shall report to the United States Probation Office within seventy-two hours after his release.

Defendant's pro se motion filed January 7, 2019 (Dkt. 132) and the motion filed February 12, 2019 (Dkt. 134) are dismissed as moot.

The February 28, 2019, hearing date is VACATED.

IT IS SO ORDERED.

Dated: February 14, 2019

St. Bluu
SENIOR DISTRICT JUDGE